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Car Care Center Growth Slows, But Bright Future
How Stations Can Thrive in TBA Aftermarket
UST Bell Tolls for Smaller Marketers

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Editor's Viewpoint

Let's hear it for Rep. John LaFalce (D-N.Y.) and Sen. Jake Garn (R-Utah) and all of their Congressional allies who have been willing to put it on the line in support for the small businessman.

Last March, LaFalce introduced legislation in the House that would soften the blow for lending institutions under the Superfund law. If passed, this bill would undoubtedly make it easier for marketers to obtain financing for tank upgrades.

Garn introduced a similar bill in the Senate that is aimed at insulating banks and lending institutions from lending liability. The bill has since been referred to the Senate Banking Committee.

LaFalce, like others, is determined to help the small businessman survive in today's rough-and-tumble market. This conscientious representative recognizes that the current uncertainty businesses face in securing funding and the reluctance lenders have in extending credit has been a real stumbling block, one that's forcing marketers out of business at a break-neck pace. As these financial burdens mount, marketers and Mom and Pop locations are closing down, permanently leaving the marketplace wide open to be monopolized by fewer competitors.

Prospects for passage of the legislation are considered good, although the LaFalce bill is probably not in its final form. It is likely to be changed by the House Energy and Commerce Committee or in the House itself. When LaFalce introduced a bill last year with some of the same objectives, 290 Congressmen joined in as cosponsors. This year, his bill attracted 125 cosponsors in only two weeks.

LaFalce's bill would eliminate costly mandatory inspection or evaluation of a site before financing is extended. You can read the details on page 45.

What's so exciting about this whole package is that bankers like what they see. The American Bankers Assn. (ABA) supports both pieces of legislation. Incidentally, the ABA helped in drafting both bills. "A clarification of the lender's exemption is absolutely necessary" if banks are going to make loans to oil marketers, "and we believe the bills do that," explains Mark Borneko, an ABA spokesman.

Undoubtedly, EPA passed the buck when it established national regulations and then left the implementation of these regs to the state and local governing bodies. Now, EPA is conceding that marketers are confronted with serious financial problems that must be solved. EPA officials even acknowledge what marketers have been saying for months—the UST regs are negatively impacting rural areas and small towns. EPA reports that the closing of rural stations could force consumers to drive many miles to fill up their tanks and that the lack of nearby competition could lead to increased fuel prices.

Marketers are not able to get the financial assistance they need to remain viable and competitive in today's market. It's about time that regulators and lawmakers take notice and realize that protecting the environment is important, but so is maintaining the foundation on which this country was built. I recommend you telephone your local congressman to stress why these bills are so important to your survival and the survival of independent marketers alike. *—Peggy Smedley*

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Unocal's Clay R. Warnock and five automotive aftermarket executives discuss the challenges and trends for the service station TBA business.

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Amerada Hess and Chevron Repeat as Top Importers

Amerada Hess Co., a New York-based independent, topped the list again in 1990 as the nation's biggest importer of distillates, resid and jet fuels. It also overtook Getty Oil Co. as the No. 1 importer of gasoline. Chevron Oil Co. repeated in 1990 as the leading importer of crude oil and of crude oil and product.

Here's the rundown as provided by the Energy Information Administration in mid-March, listing the top 10 in each of six categories as follows:

THE 10 TOP IMPORTERS OF CRUDE AND PRODUCT IN 1990

Crude Oil and Product

Company and headquarters	Volume (000 b/d)	% of U.S. Total
Chevron, San Francisco	725	9.11
Star (Texaco), Houston	621	7.81
Exxon, New York	483	6.07
Amoco, Chicago	475	5.97
Sun, Philadelphia	379	4.76
Shell, Houston	373	4.69
Mobil, Fairfax, Va.	336	4.22
BP America, Cleveland	305	3.83
Amerada Hess, New York	295	3.71
Coastal, Houston	286	3.60
TOP 10 TOTAL	4,278	53.78
TOTAL U.S.	7,954	

Crude Oil Only

Company and headquarters	Volume (000 b/d)	% of U.S. Total
Chevron, San Francisco	655	11.15
Star (Texaco), Houston	610	10.38
Amoco, Chicago	454	7.73
Shell, Houston	352	5.99
Exxon, New York	325	5.53
Sun, Philadelphia	315	5.36
Mobil, Fairfax, Va.	309	5.26
BP America, Cleveland	270	4.59
USX (Marathon), Pittsburgh	224	3.81
Koch, Wichita, Kans.	221	3.76
TOP 10 TOTAL	3,735	63.56
TOTAL U.S.	5,876	

Finished Motor Gasoline

Company and headquarters	Volume (000 b/d)	% of U.S. Total
Amerada Hess, New York	46	13.94
Getty, Jericho, N.Y.	31	9.39
Bear Stearns, New York	21	6.36
Mobil, Fairfax, Va.	21	6.36
Citgo, Tulsa	20	6.06
Cumberland Farms, Canton, Mass.	19	5.76
C Itoh (Amer.), Houston	16	4.85
Coastal, Houston	15	4.55
Texport, Houston	15	4.55
Global Petroleum, Waltham, Mass.	14	4.24
TOP 10 TOTAL	218	66.06
TOTAL U.S.	330	

Distillate Fuel Oil

Company and headquarters	Volume (000 b/d)	% of U.S. Total
Amerada Hess, New York	64	23.10
Cargill, Minneapolis	32	11.55
Global Petroleum, Waltham, Mass.	26	9.39
Coastal, Houston	21	7.58
Axel Johnson, New York	13	4.69
Northville, Melville, N.Y.	13	4.69
G. E. Warren, Vero Beach, Fla.	13	4.69
Citgo, Tulsa	9	3.25
Aron J & Co., New York	7	2.53
Astroline, Reading, Mass.	7	2.53
TOP 10 TOTAL	205	74.01
TOTAL U.S.	277	

Residual Fuel Oil

Company and headquarters	Volume (000 b/d)	% of U.S. Total
Amerada Hess, New York	93	18.45
Coastal, Houston	49	9.72
Vitol S. A., Houston	42	8.33
Chevron, San Francisco	40	7.94
Clarendon Mktg., Stamford, Conn.	36	7.14
Global Petroleum, Waltham, Mass.	34	6.75
Clark Trading, Clayton, Mo.	24	4.76
BP America, Cleveland	21	4.17
Solomon, Inc., Greenwich, Conn.	18	3.57
Sun, Philadelphia	17	3.37
TOP 10 TOTAL	374	74.21
TOTAL U.S.	504	

Jet Fuels

Company and headquarters	Volume (000 b/d)	% of U.S. Total
Amerada Hess, New York	21	20.39
Citgo, Tulsa	14	13.59
BP America, Cleveland	11	10.68
United Airlines, Elk Grove, Ill.	9	8.74
Defense Fuel Supply Center, Alexandria, Va.	8	7.77
Texport, Houston	8	7.77
Cumberland Farms, Canton, Mass.	7	6.80
PanAm World Airways, New York	7	6.80
Texaco, White Plains, N.Y.	7	6.80
Mobil, Fairfax, Va.	5	4.85
TOP 10 TOTAL	97	94.17
TOTAL U.S.	103	

Source: Energy Information Administration, Petroleum Supply Monthly, Special Report, March 1991

• TRENDS

A Fair Question: Can OPEC Win Control of Post-Iraq Supplies?

It was almost six and five and take your pick on April Fool's Day in trying to anticipate whether crude and product supplies will be long, short or merely passable sometime this summer. The same holds true for prices and margins.

The six, five and take your pick gambit is the one that gamblers use in trying to hedge bets against situations that could change overnight and bounce off the wall in any direction at any time, usually resulting in financial gain for some and sheer disaster for others.

Before, during and immediately after the Iraqi-Coalition Forces combat in the Persian Gulf several months ago, the general expectancies were that supplies of crude and product were more than adequate and probably would be worked down in sluggish marketplaces. That would theoretically result in little movement up or down in product supplies and prices throughout most of '91 and probably early '92 as well.

There was some talk that crude oil prices might collapse, as they did in 1986, as a result of surpluses everywhere. Some Organization of Petroleum Exporting Countries (OPEC) members whooped it up for production cuts to avoid this, however, and stabilized crude prices at the $20-$21 bbl. level. It was assumed that both a defeated Iraq and a scorched Kuwait would be very, very hungry for ready cash but also would be very, very slow in coming back into the crude marketplaces.

OPEC members agreed in early March to impose a 5% cut as quickly as possible, roughly 1-million b/d. As in the past, however, this seems to be merely another go-round in the numbers game that OPEC'ers are constantly playing. Outsiders who monitor OPEC operations say the exporters are supposedly shooting for an output of 22.3-million b/d versus the current level of 23.4-million b/d. In reality, however, the cut looks more like 500,000 to 750,000 b/d to them, substantially less than the public announcements said.

Lawrence Goldstein, president of Petroleum Research Foundation Inc., in New York City, was quoted as saying, "This can hardly be called a cut—it's more like a seasonal decline. They're [actually] reducing production by about one-half of what they're claiming." Other OPEC watchers and industry analysts generally went along with those comments.

Now the Soviets have gotten into the act too.

Premier Mikhail Gorbachev announced in mid-March that the USSR is cutting its global crude oil exports in half. Specific figures are not available but it is believed the Soviets were shipping out about 2.3-million b/d at the end of 1990. No one's truly sure how much impact the Soviet cut will have this summer.

Question marks about OPEC's ability to control things in the first and second quarters of 1991 arose within hours after all 13 members had signed their names to the March pact.

The *Wall Street Journal,* for example, reported that "OPEC's new pact won't cut oil output as deeply as claimed, some officials say."

The *New York Times,* in similar vein, questioned whether OPEC could enforce the new accord. The article said, "Given OPEC's poor record in enforcing its previous production agreements, many analysts predict that prices could slide because the new output levels could greatly exceed demand and because individual OPEC members might try to increase revenues by producing more than their allocated levels."

What's going to happen this summer? Like the betting men say, it's six and five and take your pick.

—By J. Richard Shaner

• MARKETPLACE AT A GLANCE

AVERAGE GASOLINE PRICES IN THE U.S. (per gal.)

FEBRUARY	Gasoline (All types)	Leaded Regular	Unleaded Regular	Unleaded Premium
U.S. City Avg.	$1.198	$1.137	$1.143	$1.321
Regions				
Northeast	1.253	1.349	1.179	1.376
North Central	1.176	1.156	1.136	1.301
South	1.188	1.140	1.123	1.298
West	1.189	1.127	1.150	1.326

Source: U.S. Dept. of Labor, Bureau of Labor Statistics.

STOCKS (Add 000 bbl.)

	3/29/91	3/30/90
Gasoline (Total)	211,450	228,283
Gasoline (Unleaded)	164,227	172,162
Jet Kerosine	38,985	40,855
Distillates	97,646	102,781
Residual	43,366	44,118

**Included in gasoline total.*
Source: American Petroleum Institute.

UST Bell Tolls for Smaller Petroleum Marketers

The word finally appears to be getting around to legislators and environmental agencies at national, state and local levels that if something isn't done, underground storage tank (UST) regulations are going to take a heavy toll on smaller marketers. Rural and small-town areas will be hurt most.

The reason is that the costs associated with USTs, while supportable by larger oil companies, may be insupportable for smaller ones—and it's the small ones that supply most of rural and small-town America.

It isn't that the Environmental Protection Agency (EPA) and others didn't know that the costs of preventing, finding and remedying leaking tanks would be heavy, but rather that they made no meaningful attempt to determine how heavy the burden would be, where it would fall and, most especially, how many UST owners and operators could not survive the costs.

The assumption was generally that, whatever the costs, oil marketers would foot the bills and pass them along to customers in the form of higher prices. This pass-along theory was soft-pedaled so as not to stir up the public unduly, and worse, it was also substantially wrong. Recent surveys and studies show that many smaller marketers may not be able to pass along their increased costs, with the consequence that they will go under, or at least be put at a severe competitive disadvantage.

Marketers throughout the country have begun to arm themselves with these new findings and distribute them to legislators and others who might be able to help. For some marketers, the battle has already been lost. For most, however, there are growing hopes—or should be—that help will arrive in time.

EPA has issued a draft rule, and bills have been introduced in the U.S. Senate and House, that would solve one of the gravest problems for gasoline marketers—the inability to get loans to make tank upgrades. EPA was considering whether to grant marketers an extension on UST compliance until more states can enact assistance programs.

EPA, not anxious to delve too deeply into the murky consequences of its underground storage tank regulations, has finally done so officially—at the request of the Senate Appropriations Committee. In its study, EPA admits there are many serious problems for UST owners and operators, but it passes the buck to the states to work out solutions.

The Petroleum Marketers Assn. of America (PMAA), after analyzing EPA's study, says the agency "effectively shifts to the states the responsibilities of solving the critical problems imposed by the requirements, and shirks its duty as the creator of the program to develop innovative and workable solutions."

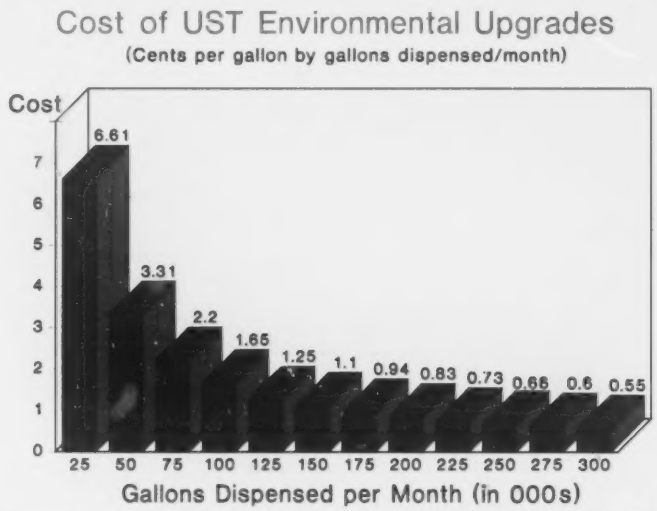
The Senate committee asked EPA, among other things, to discuss actions it and other federal and state agencies can take to assist petroleum UST owners and operators to upgrade or replace their tanks, detect leaks and clean up after leaks and help UST owners to obtain affordable tank insurance to meet the financial responsibility mandates.

The buck was passed when EPA declared its role is to establish national baseline regulations and then to let the states implement the regulations. EPA accepted the responsibility only of providing funding, training and other support to help states, which it claims to have been doing. Petroleum marketers say they haven't seen much EPA support on issues vital to their survival.

EPA's stated policy sets tank owners adrift while the agency awaits state action. But, notwithstanding these faults, EPA's report to the Senate committee is useful in what it recognizes are serious problems somebody must solve.

What EPA found out

EPA says a significant number of small retail motor-fuel firms and single-station owners are expected to experience "severe financial distress" or "business failure" trying to comply with UST regs.



Source: Economic Impact on Independent Oil Marketers of Environmental Regulations, by Jerome B. Siebert, economist, department of agricultural and resource economics, University of California, Berkeley.

EPA estimates that about 64% of small retail firms and 40% of single-station owners will experience at least temporary financial hardship, while about 30% of single service stations and 25% of small retail firms are expected to close or file for bankruptcy.

"Among service stations that are smaller than average, as most rural stations are, the impacts are expected to be more than twice as great: 89% could experience severe financial distress and 53% could fail," EPA says.

The report estimates that there are 80,300 single-station operators in the country and 63,000 small retail firms (both defined has having less than $1-million in assets) that together account for more than 535,000 underground tanks.

When state funds are available for leak remediation, potential business failures drop to 14% for single service stations and

By Mark Emond
Staff Reporter

8% for small motor-fuel firms, but severe financial distress caused by meeting the technical standards (such as leak detection and tank replacement or upgrades) does not drop.

In other words, even if state funds pay for corrective action, the cost of complying with technical standards for underground storage tanks are still substantial relative to the sales, profits and assets of smaller firms. EPA declares, "While state funds achieve the environmental objective of fostering cleanups and the economic objective of avoiding more closures, they do not significantly reduce the economic strains imposed by compliance with the technical standards."

EPA admits that the UST regs could cause greater problems in rural areas and small towns. The study says, "Impacts on rural areas have been minor so far... [but] disproportionate impacts...might grow more common as the regulations take effect."

EPA explains that the closing of rural stations could present two types of problems for rural consumers: first, even the nearest station will often be miles away; second, the lack of nearby competition could allow some isolated stations to raise fuel prices.

What UST owners must do

EPA says the costs of complying with underground storage tank regulations "pose a significant burden to many small owners and operators." For example, to obtain insurance, petroleum marketers must prove that their tanks aren't leaking or must fully upgrade their tanks. The range of costs for such activities are $1,500 for a tank test at a three-tank facility, $30,000-$160,000 for upgrade or replacement and $100,000 for corrective action.

Owners and operators of over 1,000 tanks were required to be in compliance with the financial responsibility regulations by January 1989. The deadline for those with 100-999 tanks was October 1989. The deadline for those with 13-99 tanks was extended to April 26, 1991, and for those with 12 or fewer tanks, Oct. 26, 1991.

EPA was considering PMAA's request for an extension of the 1991 deadlines at least until Dec. 22, 1992.

What states can do

EPA analyzed the kinds of steps federal and state agencies can take to help UST owners and operators meet compliance costs.

The EPA says the Federal Leaking Underground Storage Tank (LUST) Trust Fund, which cannot be used to provide economic relief without statutory changes, should not be changed.

EPA contends the fund may not be large enough to perform all the cleanups it may be called upon to do; therefore, the agency doesn't think the fund's scope should be enlarged to help address the compliance cost problems of individual UST owners and operators.

The fund is large. Through a 0.1¢ gal. gasoline tax, $500-million was collected for the fund, and in 1990 it was reauthorized to permit the collection of an additional $500-million. This billion dollars is available only to cover cleanup costs when the responsible party is bankrupt or cannot be located.

The fund does not provide assistance for leak detection, tank upgrades, site assessments, or any expense other than cleanups.

This leaves to the states five options, EPA says, all of which have the aim of reducing the costs of leak detection, UST upgrading or replacement, closure, or corrective action to owners and operators. These options are direct state loans, loan guarantees, interest subsidies, grants and tax incentives.

EPA's analysis of each of these options is too detailed to report here, but a summary of the characteristics of different types of programs is shown in an accompanying table.

Note that the two assistance mechanisms that have the highest ability to aid the weakest firms are direct loans and grants. These mechanisms also have the highest startup costs.

How a Banker Is Helping To Get the Story Out

Smith W. Brookhart III, president of Ozark Mountain Bank, a community bank in Branson, Mo., is alarmed by the way loans have been shut down for gasoline marketers, and he's trying to see what he can do about it.

Located in southeast Missouri where travel and tourism are a main business dependent on gasoline stations and convenience stores, the bank has made many loans on them over the years.

> ***"What we're looking for is protection from paying for the cleanup."***
> ***—Smith Brookhart III***

But in May 1990, the bank's board, on the advice of attorneys, decided flatly that no loans would be made anymore "on a gas station, convenience store, or anything else that's got a petroleum product in it," says Brookhart.

The banker explains that the decision came after the bank almost got "trapped" on an old gasoline station turned into a C-store. Brookhart says, "Fortunately, we got out with an audit done on the property. It didn't cost us $100,000 to get out of it, but I was afraid it was going to when it started out."

Brookhart explains that that prior to this fateful experience, "we didn't know about this stuff. We heard rumors about it, and of course big city bankers talk about it. We knew about the Fleet Factors case, but we didn't know what the impact on us would be."

The banker says he didn't know all of the details of the new federal legislation on this matter, but, "for us, in terms of what our country lawyers are advising our board, until Congress puts back in the verbiage that allows us to loan on a piece of ground and not pick up the liability, we're not going to mess with it. What we're looking for is protection from paying for the cleanup."

Brookhart has been active in the American Bankers Assn. to spread the word about the plight of petroleum marketers. "What's going to happen is that when community bankers start telling their little stories about their local filling station or convenience store that just got hammered by the EPA or somebody, those guys are going to shut off lending. Marketers are going to have to do their own financing. The banks aren't going to do it," says Brookhart.

The bank president has warned local realtors of the risks, too. "What I tell them is that at this point there has to be a very strong suspect in the marketability of any service station. They could be pumping a lot of gasoline, but it would have darned little marketability if there's a suspect that's carrying a $300,000 cleanup. I said to these guys, you need to be plugged into this, too."

But Brookhart is trying to help. "We have about 4-million tourists here a year, so we've got a lot of service stations and convenience stores serving the public. We've loaned to many of them. We still have loans outstanding on several of them, but we're not doing new ones. If telling our story will help out, we've got to get it done."

UST owners and operators should study EPA's full analysis to judge which options would do the most good and which have the best chance of being adopted in their respective states.

PMAA's day in court

PMAA made a major presentation to a House committee in March, pointing out the increasing difficulty of marketers to obtain financing to upgrade or replace their USTs. The presentation was made by Dave Robinson, chairman of Robinson Oil Co., Garden City, Kan., a small petroleum marketing company selling gasoline and diesel fuel in western Kansas. He is also a past president of PMAA.

Speaking to the House Energy and Commerce Subcommittee, Robinson said failure to obtain financing has forced many marketers to close stations, and the trend is likely to continue unless steps are taken to ease lenders' fears about making loans on underground tanks.

"Marketers are finding that financing is scarce or unavailable due to their lenders' fears of environmental liability," he said, noting that a recent survey conducted by PMAA and two other national industry groups showed that over the past two years, one-third of marketers who applied for loans to make upgrades and replacements were turned down.

Another problem, he told the subcommittee, is the prohibitive cost of UST liability insurance. The average premium a company has to pay for such insurance is now more than $46,000 yr., more than double the cost in 1988, he said.

Robinson said the one-year extension granted small tank owners has given some of them time to obtain coverage through state trust funds, but many states still do not have such funds, and another extension is necessary to enable more state funds to become operational. He proposed an extension until Dec. 2, 1992.

He urged the subcommittee to amend the Federal LUST Trust Fund to allow the use of some funds from the program to augment the state programs on a matching basis.

He also called for low-interest loans to help small businesses comply with federal environmental statutes.

Impact of UST regulations

An economist at the University of California, Berkeley, in a new study on the economic impact of environmental regulations on independent oil marketers, concludes that not only are marketers in jeopardy, but the small businesses and farms they serve are also threatened. In fact, the whole economy is affected, including consumers.

"The survival and economic viability of the small business/entrepreneurial sector of California'a economy is dependent on the convenient and economical availability of motor-vehicle fuel to transport goods and services as well as people to and from their workplace," wrote Jerome B. Siebert, of the university's department of agricultural and resource economics.

"Some sectors in particular, such as California agriculture, which is largely made up of small and medium-sized farms, is particularly vulnerable to disruptions and inefficiencies in the petroleum product distribution system." Such disruptions "could have serious implications for economic growth, employment and consumer food prices."

Monthly Gasoline Throughput of California Retail Stations

Average Gal./Mo.	Branded	Unbranded	Total
Below 50,000	1,712	3,661	5,373
50-100,000	2,907	689	3,596
100-150,000	1,892	39	1,931
150-200,000	1,644	61	1,705
Over 200,000	413	90	503
Total	**8,568**	**4,540**	**13,108**

Source: Energy and Environmental Analysis, Arlington, Va., for Western States Petroleum Assn.

Unrecoverable costs

Siebert said small marketers are more heavily impacted by UST costs, and rural and small-town marketers, whose stations sell relatively small quantities of gasoline, must obtain substantially greater margins to survive. It's questionable whether they can obtain such margins.

Citing a survey of its members by the California Independent Oil Marketers Assn. (CIOMA), Siebert said replacement of three tanks costs about $120,000. Amortized over 10 years at 11% interest, the monthly cost is estimated to be $1,653. Cleanup of leaking underground storage tanks can run two to three times this amount.

The ability to recover this estimated cost is dependent in large part on the volume of gasoline sold. Siebert calculates that a station selling 25,000 gal. a month would need 6.6¢ gal. to recover the added costs, while one doing 300,000 gal. a month would need only 0.6¢ gal. (See table on page 45.)

"This economy-of-size factor has serious consequences for stations which must remain competitive in order to stay in business," the economist continued.

"Smaller stations will likely have to close due to the inability to either finance needed capital outlays or pass along cost increases in a competitive environment.... The pressure is likely to drive many more small operators out of business. Since the independent oil marketer tends to be the small and medium operator, the heaviest casualties are likely to occur in this sector.

"Since smaller-volume stations are in the more rural and agricultural areas of the state, it is likely that the impact will be felt to a greater degree in those areas than in high-volume urban and suburban areas.

"Cost increases will be difficult to pass on in the form of higher prices in the short run, particularly in areas where stations are competitive. In the long run, prices will increase to consumers to reflect higher costs. In the interim, the adjustments will take place in the industry, both in terms of its structure and demand for its products.

"In areas where competition takes place among a great number of stations, competitive advantage will shift even more to those stations with high volume, as the ability to pass along cost increases definitely lies with them."

The impact extends further. "Not all the costs of environmental regulation will be reflected in higher prices," he said. "If a station is closed because the owner cannot afford to take the necessary measures to meet environmental standards and cleanup is involved, the burden will likely fall on the public sector. In this case, tax revenues will likely have to be used to accomplish the necessary cleanup."

The heavy toll

The stations in California that will suffer the heaviest casualties are not just a few; on the contrary, they are a substantial majority of all stations in the state.

This is shown in a new study of California gasoline station throughputs by the Western States Petroleum Assn. (WSPA), an industry trade group representing 50 major and large independent oil companies in the West. Of the 13,108 stations in the state, 8,969—or 68%—have monthly gasoline volumes of less than 100,000 gal. (See table on this page.)

Economist Siebert points out that costs do not flatten out until a volume of well over 100,000 gal./mo. is reached. Jim

Gigoux, executive vice president of CIOMA, says, "This basically says that if marketers are not pumping 100,000 gal./mo., they don't have the financial wherewithal to amortize all of the UST costs."

Help may be coming

Federal legislation has been introduced, and EPA has proposed rules, that would attack a crucial problem: the inability of marketers to obtain loans for UST compliance, upgrading or other purposes.

Oil marketers throughout the country have reported how banks and other lenders have rejected loan applications for fear they could become liable for leaks, environmental damage and third-party damage claims.

The Superfund legislation, which established hazardous-waste cleanup procedures, meant to exclude lenders from such liabilities, holding only the parties actually managing the operation of the facilities responsible for environmental damage. But recent court decisions have invalidated that exemption.

The classic case is *U.S. v. Fleet Factors Corp.*, in which the U.S. 11th Circuit Court of Appeals ruled that a secured lender can be held liable under the Superfund law if it has the "capacity to influence" a business's handling of hazardous materials. This has been interpreted to mean that a lender can be inferred to have such influence.

Because this and other cases expose lenders to possible cleanup and other liabilities, droves of financial institutions have stopped lending to gasoline marketers and many others.

In March, Rep. John J. LaFalce (D-N.Y.) introduced legislation (HR-1450) that would reinstate the exemption intended in the Superfund law. Referring to the Fleet Factors case, LaFalce said, "The result of the current uncertainty is that certain businesses have found it difficult to secure funds, and many lenders are unable to determine whether they should extend credit or how they should deal with debtors who need additional assistance or who are in default."

Prospects for passage of the legislation were considered good, although the bill was probably not in its final form. It was likely to be changed by the House Energy and Commerce Committee or in the House. When LaFalce last year introduced a bill with some of the same objectives, 290 Congressmen joined as cosponsors. His legislation this year attracted 125 cosponsors in only two weeks.

The LaFalce bill follows closely a draft rule issued by EPA in March and submitted to the Office of Management and Budget for preliminary review. LaFalce praised the proposed rule, saying that if his bill were passed today, the EPA rule could be promulgated virtually as originally drafted. He added, however, that "legislation is necessary to give statutory guidance, to address a few items omitted by EPA and to give certainty to EPA's efforts."

EPA's draft rule and HR-1450 are both carefully crafted to prevent parties responsible for contamination from getting off. They don't want the lender exemption to be a loophole through which violators can escape. This is essential to obtain support of environmental groups.

LaFalce's bill would eliminate costly mandatory inspection or evaluation of a site before lending, but would substitute a favorable inference that such an inspection constitutes grounds for exemption from any liability that might develop.

Marketer Turned Jobber Exec Carries Message to Academia

Jim Gigoux, executive vice president of the California Independent Oil Marketers Assn. (CIOMA), had personal reasons for wanting to find help for jobbers struggling to survive the heavy costs of underground storage tank (UST) regulations. A former marketer himself, he was one of the early casualties of the regulations.

Gigoux had another reason. As an agricultural economist, he was keenly aware of what closed stations meant not only to marketers, but also to farmers and other small businesses in rural and small-town areas.

On a trip east, he discussed these problems with a Washington, D.C., friend who had been a deputy administrator in the Dept. of Agriculture. The friend said Gigoux ought to talk to an agricultural economist at the University of California at Berkeley, Jerome Siebert, who used to be with the Dept. of Agriculture.

Gigoux went to Berkeley and did, and Siebert "then took it upon himself to make this study because of the potential impact on the agricultural sector," Gigoux explains. "We could have done the same study, but it wouldn't carry the credibility."

A central conclusion of the study is that UST regulations fall heaviest on rural areas, where farmers and small businesses depend primarily on independent marketers to take care of their transportation needs.

Gigoux graduated from Oklahoma State University, where he got a master's degree in agricultural economics and production management. After 12 years in Commerce Dept. association work in Oklahoma and Colorado, he became a petroleum marketer in Grand Junction, Colo. This became a grim experience. He explains: "We lost a C-store when the Colorado economy went to pot, but we kept our cardlock operations. Then we sold those, subject to a site evaluation. When we dug the hole, we found a bunch of gasoline that wasn't ours. It was an old Husky station we bought back in 1980, but who looked for leaking gasoline back then?"

Gigoux still has that property there and can't give it away.

With his marketing and association background, Gigoux sought and got the CIOMA position. He explains that philosophically, "Economics dictated that the small Jim Gigoux shouldn't be in business."

EPA Evaluation of Marketer Assistance Programs

	Direct Loans	Loan Guarantees	Interest Subsidies	Grants	Tax Incentives
Currently used by state UST programs	X	X	X	X	
Provides direct access to capital	X			X	
Administrative difficulty	High	Low	Low	Low	Low
Private-sector involvement	Low	High	High	Low	Low
Startup costs	High	Low	Low	High	Low
Ability to aid weakest firms	High	Low	Low	High	Low

Source: Environmental Protection Agency

LaFalce says, "Drawn from EPA draft language for the most part and responding to environmental concerns, this bill provides benefits for everyone—business can find financing [and] environmental groups can gain comfort that lenders have pressures upon them to do a good job in the environmental area."

In the Senate, Jake Garn (R-Utah) introduced a bill (S-651) that aims at insulating banks and banking agencies from the unintended impact of Superfund decisions. The bill was referred to the Senate Banking Committee.

Bankers like what they see

The American Bankers Assn. supported both bills, and in fact helped in their drafting. Mark Borneko, an ABA spokesman, says, "A clarification of the lender's exemption is absolutely necessary" if banks are going to make loans to oil marketers, "and we believe the bills do that." He adds that both would probably be changed before they are voted upon, however.

Craig Wolfson, vice president of public and governmental affairs for Wells Fargo, says LaFalce's bill would do what ERA's proposed rule doesn't: "prevent outside third parties from suing banks for environmental cleanup costs."

Supporting the LaFalce and Garn bills, Wolfson says Wells Fargo was stressing the following points:

- "The existing threat of liability for hazardous-waste cleanup is a strong disincentive for lending and is significantly reducing credit availability for many businesses. Small businesses are particularly at risk since upfront assessment fees may make smaller loans uneconomical.
- "The legislation would not alter the thrust of Superfund. Rather, it will restore the exemptions provided under the original law, which has been undermined by judicial interpretation.
- "Liability for environmental damage should be imposed on those who cause it, not on innocent lenders simply protecting their security interests or acting as fiduciaries."

Smith W. Brookhart III, president of Ozark Mountain Bank in Branson, Mo., says he no longer makes loans on gasoline stations—on the advise of counsel and an order of the board of directors. He was not familiar with the details of the LaFalce and Garn bills, but says there was no way the bank would start lending to petroleum facilities again unless the lender is exempt from liabilities. (See sidebar on page 46.)

Rays of hope

UST regulations still hang heavy over many marketers, although progress is being made to bring more into compliance. One area of progress is in meeting the EPA's financial responsibility requirements.

In a joint study by PMAA, the Society of Independent Gasoline Marketers of America (SIGMA) and the National Assn. of Convenience Stores (NACS), 21% of marketers were found this year to be without any type of financial assurance. Although this is considered still too high, it represents a significant improvement over 1990, when an estimated 41% of marketers were without financial assurance.

Private pollution liability insurance is too expensive for the average marketer, with only 17% reporting carrying such insurance.

The number of state trust funds is increasing, providing marketers with an alternative means—perhaps the best—of meeting financial requirements. In the joint study, 70% of respondents said that at least some of their tanks were covered by state funds.

For some marketers, the battle has already been lost; UST regs have forced them out.

While there are 40 state trust funds, PMAA reported that only 19 have been approved by the EPA: Alaska, Georgia, Idaho, Illinois, Iowa, Louisiana, Michigan, Minnesota, Mississippi, Montana, Nevada, New Hampshire, North Carolina, Ohio, Oklahoma, South Carolina, Texas, Utah and Vermont. Nine states have submitted their trust funds for approval: Arkansa, Colorado, Connecticut, Florida, Kansas, Nebraska, North Dakota, South Dakota and Tennessee.

PMAA has concluded that the spread of trust funds during the EPA's one-year compliance extension has significantly improved the financial assurance coverage of independent oil marketers. PMAA hoped this improvement would influence EPA to grant another extension.

EPA and others have finally come to recognize—and admit—the toll UST regulations may take on marketers, especially medium and small ones. EPA is drafting rules that could help out. Some states are considering ways to help.

Not only marketers, but also lending institutions, are concerned about the unavailability of loans for petroleum facilities. Increasingly, bankers and others want to help get the word around.

Marketers are distributing the new findings to legislators and others in hope favorable action will be taken. Federal legislation has been introduced to solve some of the most serious problems.

There is ample activity just now to suggest that at last the problems of complying with UST regulations are being recognized and that steps are being taken to solve them. Although there is still a ways to go, the heaviest burdens may be behind most marketers. Anyway, marketers have grounds to be more hopeful. NPN

The EPA concedes that the costs of complying with UST regs "pose a significant burden to many small owners and operators."

Letters to the Editor

Misinformation

A letter to the editor in your March 1991 issue from Allen C. Davis, Environmental Services Division, Adkisson Insurance Agency, Inc., reeks of sour grapes and misinformation.

Mr. Davis and the insurance industry—if you can call it an industry—do not like state UST cleanup funds, and they will go to any length to badmouth them. State cleanup funds have taken them out of the petroleum liability insurance business for USTs.

I would like to ask Mr. Davis how many insurance companies or programs purported to cover USTs have gone out of business or withdrawn from the market? Most of them.

What Mr. Davis and all UST owner/operators should keep in mind is in those states that have passed UST cleanup fund legislation, the record is abundantly clear that it is established "public policy" to clean up and pay for UST leaks, regardless of the risk involved. When you get down to the pinch and the squeeze, that's money in the bank. Mr. Davis simply does not understand the first thing about state-sponsored UST cleanup funds, and to compare state funds to playing Russian roulette with six bullets indicates the scope of his ignorance.

We in the petroleum marketing business would not have had to go through all these gyrations of setting up state cleanup funds if the insurance industry had responded to our needs. State UST funds are the savior of independent petroleum marketers.

Roger F. Dreyer
President
Ohio Petroleum Marketers Assn., Inc.

For The Record

A story in your March issue (p25) claims an API study on premium grade gasoline sales, *Analysis of Factors Influencing the Consumption of Premium Motor Gasoline*, published last July, was given "back-burner treatment" by API. This is an unwarranted and incorrect conclusion.

For the record, API Response Paper No. 449, highlighting key findings of the study, was mailed in mid-August of 1990 to every daily U.S. newspaper and more than 100 trade publications, including *NPN*. Further, a news release about the study was sent to a variety of publications, including *NPN*, in late August. This was when copies of the study, with a July 1990 publication date, were back from the printer in quantities sufficient for mailing in response to any requests a news release might generate.

If any of your readers would like a copy of *Analysis of Factors Influencing the Consumption of Premium Motor Gasoline*, single copies are available at no charge from the American Petroleum Institute, Policy Analysis Dept., 1220 L St. NW, Washington, D.C. 20005. (202) 682-8549.

Leonard G. Bower
Director, Policy Analysis
American Petroleum Institute

Thanks

Thank you very much Mr. Borenkind, for taking time out of your schedule to talk with me about the issue relating to potential environmental liability between a retailer and supplier for a product spill evolving from an aboveground bulk storage tank wherein the retailer is invoiced for product directly from the readings of the dispensing pumps.

I enjoy reading your articles in *NPN* [Legal Tips for Marketers], and I am very grateful for your kind assistance.

G. Wayne Hardee
Hardee Hardee & Harper

OOOOPS

and then oooops some more. After all that hard work in tracking down the service station totals reported in the *NPN* April issue (p26), Murphy's Law intervened. On Page 28, the big table headed "20-Year Overview" delete the (add 000) at the top of the first three columns. These numbers were meant to be expressed in thousands, not millions. On Page 29, in the second color-boxed item headed "More Top 10's, Gallonage etc." add three more ciphers at the top of column 1. These numbers were meant to be expressed in billions, not millions.

Also, Plan Corp., Carol Steam, Ill., specializes in *bullet-resistant*, not bulletproof enclosures. ***NPN* regrets these errors.**

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